

1 **H. B. 3016**

2  
3 (By Delegates White, T. Campbell, Cann and Kominar)

4 (By Request of the Department of Administration)

5 [Introduced February 4, 2011; referred to the

6 Committee on the Judiciary then Finance.]

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend and reenact §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-5,  
11 §5A-10-6 and §5A-10-9 of the Code of West Virginia, 1931, as  
12 amended; and to amend said code by adding thereto two new  
13 sections, designated §5A-10-12 and §5A-10-13, all relating to  
14 the responsibilities of the Real Estate director; permitting  
15 the director to acquire real property; permitting the  
16 contracting for third-party real estate services; permitting  
17 the spending units to be billed for the actual costs of those  
18 third-party services; billing the spending units for the  
19 services of the Real Estate Division; creating the Real  
20 Property Fund; establishing what revenues are to be deposited  
21 into that fund; requiring certain revenues to be deposited  
22 into the fund instead of the General Revenue Fund;  
23 establishing what moneys from the fund may be used for; and  
24 exempting real property owned by the Department of Agriculture  
25 and the West Virginia State Conservation Committee from

1 certain accounting and reporting requirements.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-5, §5A-10-6 and §5A-  
4 10-9 of the Code of West Virginia, 1931, as amended, be amended and  
5 reenacted; and that said code be amended by adding thereto two new  
6 sections, designated §5A-10-12 and §5A-10-13, all to read as  
7 follows:

8 **ARTICLE 10. REAL ESTATE DIVISION.**

9 **§5A-10-1. Division created; purpose; director.**

10 (a) There is hereby created the Real Estate Division within  
11 the Department of Administration for the purpose of establishing a  
12 centralized office to provide real property acquisition, leasing,  
13 appraisal and other real estate services to the Secretary of the  
14 Department of Administration.

15 (b) The division shall be under the supervision and control of  
16 an executive director, who shall be appointed by the Governor, by  
17 and with the advice and consent of the Senate.

18 (c) ~~Candidates for the position of~~ The executive director  
19 shall:

20 (1) Have at least a bachelor of arts or science degree from an  
21 accredited four-year college or university; and

22 (2) (A) Be a licensed real estate broker, pursuant to the  
23 provisions of article forty, chapter thirty of this code; or

24 (B) Be a licensed or certified real estate appraiser pursuant  
25 to the provisions of article thirty-eight, chapter thirty of this

1 code; or

2 (3) (A) ~~Be considered based on their~~ Have demonstrated  
3 education, knowledge and a minimum of ten years' experience in the  
4 areas of commercial real estate leasing, commercial real estate  
5 appraisal; or

6 (B) ~~Any relevant~~ Have experience of a minimum of ten years  
7 which demonstrates an ability to effectively accomplish the  
8 purposes of this article.

9 (d) The Real Estate Division is authorized to employ such  
10 employees, including, but not limited to, real estate appraisers  
11 licensed in accordance with the provisions of article thirty-eight,  
12 chapter thirty of this code, as may be necessary to discharge the  
13 duties of the division.

14 **§5A-10-2. Leases for space to be made in accordance with article;**  
15 **exceptions.**

16 (a) Notwithstanding any other provision of this code, no  
17 department, agency or institution of state government may acquire,  
18 lease, or offer to lease, as lessee, any real property, grounds,  
19 buildings, office or other space except in accordance with the  
20 provisions of this article and article three of this chapter.

21 (b) The provisions of the article, except as to office space,  
22 do not apply to the Division of Highways of the Department of  
23 Transportation.

24 (c) The provisions of this article do not apply to:

25 (1) Public lands, rivers and streams acquired, managed or

1 which title is vested in or transferred to the Division of Natural  
2 Resources of the Department of Commerce, pursuant to section seven,  
3 article one, chapter twenty of this code and section two, article  
4 five of said chapter;

5 (2) The Higher Education Policy Commission;

6 (3) The West Virginia Council for Community and Technical  
7 College Education;

8 (4) The institutional boards of Governors in accordance with  
9 the provisions of subsection (v), section four, article five,  
10 chapter eighteen-b of this code;

11 (5) The real property held by the Department of Agriculture,  
12 including all institutional farms, easements, mineral rights,  
13 appurtenances, farm equipment, agricultural products, inventories,  
14 farm facilities and operating revenue funds for those operations;

15 (6) The real property held by the West Virginia State  
16 Conservation Committee, including all easements, mineral rights,  
17 appurtenances and operating revenue funds for those operations; or

18 (7) The Adjutant General's Department and the West Virginia  
19 National Guard, including all real property, acquisitions, leases,  
20 easements, armories, armory projects, appurtenances and operating  
21 revenue funds for those operations.

22 **§5A-10-3. Powers and duties of Real Estate Division.**

23 The Real Estate Division has the following powers and duties:

24 (1) To provide real property acquisition, leasing, appraisal  
25 and other real estate services to the Secretary of the Department

1 of Administration and to state spending units;

2 (2) The Real Estate Division may contract for any necessary  
3 third-party real estate services to effectuate this section,  
4 including, but not limited to, appraisals, surveys, property legal  
5 descriptions, title searches and opinions and space planning, and  
6 may invoice spending units for the spending unit's actual costs and  
7 expenses associated with such necessary third-party real estate  
8 services;

9 (3) Before July 30 of each year, the Real Estate Division may  
10 charge each spending unit for the costs and services related to the  
11 Real Estate Division providing acquisition, leasing, appraisal, and  
12 other real estate services to the spending units, except those  
13 spending units that are exempt under section two, article ten,  
14 chapter five-a of this code:

15 (A) For the fiscal year immediately subsequent to the  
16 reenactment of this article, the Real Estate Division shall be  
17 primarily funded through general revenue in an amount up to, but  
18 not to exceed, the amount requested by the Real Estate Division for  
19 that fiscal year. For any additional budgetary needs, the Real  
20 Estate Division may charge a flat fee on a per square foot basis  
21 for each of the spending units' leases, whether for the occupancy  
22 of space from a private party or state-owned property.

23 (B) For every fiscal year thereafter, the Real Estate Division  
24 shall be solely funded through special revenue and may charge a  
25 flat fee on a per square foot basis for each of the spending units'

1 leases, whether for the occupancy of space from a private party or  
2 state-owned property . The Real Estate Division shall reevaluate  
3 its budgetary needs, determine its flat fee charge, and submit its  
4 new budgetary request to the State Budget Office by August 30 of  
5 each calendar year for the applicable fiscal year;

6 (4) For those spending units that are exempt under section two  
7 of this article and who request the assistance of the Real Estate  
8 Division, the Real Estate Division shall charge and invoice such  
9 spending units on a fee-for-service basis for all real estate  
10 services and costs expended and incurred by the Real Estate  
11 Division;

12 (5) The Real Estate Division's authority to bill or invoice  
13 spending units for real property costs, expenses and services under  
14 subdivisions (2), (3) and (4) of this subsection shall be in  
15 accordance with sections twelve and thirteen of this chapter.

16 ~~(2)~~ (6) To ensure that the purchase of real estate and all  
17 contracts for lease are based on established real estate standards  
18 and fair market price;

19 ~~(3)~~ (7) To develop and implement minimum lease space standards  
20 for the lease of any grounds, buildings, office or other space  
21 required by any spending unit of state government;

22 ~~(4)~~ (8) To develop and implement minimum standards for the  
23 selection and acquisition, by contract or lease, of all grounds,  
24 buildings, office space or other space by a spending unit of state  
25 government except as otherwise provided in this article;

1       ~~(5)~~ (9) To establish and maintain a comprehensive database of  
2 all state real estate contracts and leases;

3       ~~(6)~~ (10) To develop policies and procedures for statewide real  
4 property management;

5       ~~(7)~~ (11) To maintain a statewide real property management  
6 system that has consolidated real property, building and lease  
7 information for all departments, agencies and institutions of state  
8 government;

9       ~~(8)~~ (12) To develop and maintain a centralized repository of  
10 comprehensive space needs for all state departments, agencies and  
11 institutions of state government, including up-to-date space and  
12 resource utilization, anticipated needs and recommended options;

13       ~~(9)~~ (13) To provide statewide policy leadership and coordinate  
14 master planning to guide and organize capital asset management; and

15       ~~(10)~~ (14) To provide assistance to all state departments,  
16 agencies or institutions in acquiring, leasing and disposing of  
17 real property.

18 **§5A-10-5. Selection of grounds, etc.; acquisition by contract or**  
19 **lease; long-term leases.**

20       (a) The executive director has sole authority to select and to  
21 acquire by deed, contract or lease, in the name of the state, all  
22 grounds, buildings, office space or other space, the rental of  
23 which is necessarily required by any spending unit, upon a  
24 certificate from the chief executive officer or his or her designee  
25 ~~of said spending unit~~ that the grounds, buildings, office space or

1 other space requested is necessarily required for the proper  
2 function of said spending unit, that the spending unit will be  
3 responsible for all rent and other necessary payments in connection  
4 with the contract or lease and that satisfactory grounds,  
5 buildings, office space or other space is not available on grounds  
6 and in buildings now owned or leased by the state.

7 (b) The executive director shall, before executing any rental  
8 contract or lease, determine the fair rental value for the rental  
9 of the requested grounds, buildings, office space or other space,  
10 in the condition in which they exist and shall contract for or  
11 lease said premises at a price not to exceed the fair rental value  
12 thereof.

13 (c) The executive director may enter into long-term agreements  
14 for buildings, land and space for periods longer than one fiscal  
15 year: *Provided*, That such long-term lease agreements are not for  
16 periods in excess of forty years, except that the secretary may, in  
17 the case of the Adjutant General's department, enter into lease  
18 agreements for a term of fifty years or a specific term of more  
19 than fifty years so as to comply with federal regulatory  
20 requirements and shall contain, in substance, all the following  
21 provisions:

22 (1) That the Department of Administration, as lessee, has the  
23 right to cancel the lease without further obligation on the part of  
24 the lessee upon giving thirty days' written notice to the lessor  
25 ~~such notice being given at least thirty days prior to the last day~~

1 ~~of the succeeding month;~~

2 (2) That the lease shall be considered canceled without  
3 further obligation on the part of the lessee if the State  
4 Legislature or the federal government should fail to appropriate  
5 sufficient funds therefor or should otherwise act to impair the  
6 lease or cause it to be canceled; and

7 (3) That the lease shall be considered renewed for each  
8 ensuing fiscal year during the term of the lease unless it is  
9 canceled by the Department of Administration before the end of the  
10 then current fiscal year.

11 **§5A-10-6. Long-term leases of public lands for wireless**  
12 **communication towers.**

13 (a) Notwithstanding any provision of law to the contrary, the  
14 executive director has sole authority to negotiate and enter into  
15 long-term lease agreements for lease of public lands to be used for  
16 placement of wireless communication towers: *Provided*, That such  
17 long-term lease agreements may not be for periods in excess of  
18 thirty years: *Provided, however*, That for the governmental units  
19 named in subsection (d) of this section, any lease proposed by the  
20 executive director may only be entered into upon approval in  
21 writing of the ranking administrator of the respective governmental  
22 unit described in said subsection.

23 (b) All revenues derived from leases established upon the  
24 enactment of this section shall be deposited into the ~~General~~  
25 ~~Revenue~~ Real Property Fund unless the property is subject to a

1 pledge of its revenues in connection with a preexisting revenue  
2 bond issue, except as provided in subsections (c) and (d) of this  
3 section.

4 (c) Revenues from leases initiated prior to the enactment of  
5 this section or subsequently renewed shall continue to be treated  
6 as they were prior to the enactment of this section.

7 (d) Revenues derived from the lease of property under the  
8 control of the Department of Transportation shall be deposited into  
9 the State Road Fund. Revenues derived from the lease of property  
10 under the control of the Division of Natural Resources shall be  
11 retained by the Division of Natural Resources and deposited into  
12 the appropriate fund. Revenues derived from the lease of property  
13 under the control of the Department of Agriculture shall be  
14 deposited into the Agriculture Fees Fund. Revenues derived from  
15 the lease of property under the control of the Division of Forestry  
16 shall be deposited into the Division of Forestry Fund. Revenues  
17 derived from the lease of property under the control of  
18 institutions of higher education shall be deposited into the  
19 institution's education and general capital fees fund. Revenues  
20 derived from the lease of property under the control of the Higher  
21 Education Policy Commission shall be deposited into the  
22 commission's State Gifts Grants and Contracts Fund. Revenues  
23 derived from the lease of property under the control of the West  
24 Virginia Council for Community and Technical College Education  
25 shall be deposited into the council's Tuition and Required

1 Educational and General Fees Fund.

2 (e) Any long-term lease agreement entered into pursuant to  
3 this section shall contain provisions allowing for the nonexclusive  
4 use of the public lands and allowance for use of the same public  
5 space for additional towers by competing persons or corporations.

6 (f) The executive director is further authorized to enter into  
7 long-term lease agreements for additional wireless communication  
8 towers by other persons or corporations upon the same public lands  
9 in which there already exists a lease and tower provided for under  
10 this section.

11 (g) Any long-term lease agreement entered into pursuant to  
12 this section shall be recorded in the office of the county clerk  
13 where public land which is the subject of the lease agreement is  
14 located.

15 **§5A-10-9. Real property accounting and records.**

16 (a) All real property owned or leased by the state shall be  
17 accounted for by the state spending unit that owns, leases or is in  
18 the possession of the real property.

19 (b) Each state spending unit shall establish and maintain a  
20 record of each item of real property it owns and/or leases and  
21 annually furnish its records to the Real Estate Division.

22 (c) The accounting and reporting requirements of this section,  
23 except as to office space, do not apply to:

24 (1) The Division of Highways of the Department of  
25 Transportation;

1 (2) Public lands, rivers and streams acquired, managed or  
2 which title is vested in or transferred to the Division of Natural  
3 Resources of the Department of Commerce, pursuant to section seven,  
4 article one, chapter twenty of this code and section two, article  
5 five of said chapter;

6 (3) The Higher Education Policy Commission;

7 (4) The West Virginia Council for Community and Technical  
8 College Education;

9 (5) The institutional boards of Governors in accordance with  
10 the provisions of subsection (v), section four, article five,  
11 chapter eighteen-b of this code; ~~or~~

12 (6) The Adjutant General's Department and the West Virginia  
13 National Guard;

14 (7) The real property held by the Department of Agriculture,  
15 including all institutional farms, easements, mineral rights,  
16 appurtenances, farm equipment, agricultural products, inventories,  
17 farm facilities and operating revenue funds for those operations;  
18 or

19 (8) The real property held by the West Virginia State  
20 Conservation Committee, including all easements, mineral rights,  
21 appurtenances and operating revenue funds for those operations.

22 (d) With regard to public lands that may be by law  
23 specifically allocated to and used by any state agency,  
24 institution, division or department, such agency, institution,  
25 division or department shall provide an inventory of such public

1 land(s) to the Public Land Corporation in accordance with the  
2 provisions of article eleven of this chapter.

3 (e) The records furnished to the Real Estate Division shall  
4 include the following information, if applicable:

5 (1) A description of each item of real property including:

6 (A) A reference to a book, page and/or image number from the  
7 county records in a particular county; or

8 (B) A legal description;

9 (2) The date of purchase and the purchase price of the real  
10 property;

11 (3) The date of lease and the rental costs of the real  
12 property;

13 (4) The name of the state spending unit holding title to the  
14 real property for the state;

15 (5) A description of the current uses of the real property and  
16 the projected future use of the real property; and

17 (6) A description of each building or other improvement  
18 located on the real property.

19 (f) If the description of real property required under this  
20 section is excessively voluminous, the Real Estate Division may  
21 direct the spending unit in possession of the real property to  
22 furnish the description only in summary form, as agreed to by the  
23 division and the spending unit.

24 **§5A-10-12. Real Property Fund.**

25 (a) There is created in the State Treasury a special revenue

1 fund to be known as the "Real Property Fund." The Real Property  
2 Fund may be given appropriations as determined by the Governor and  
3 the Legislature but shall operate as a special revenue fund. This  
4 fund consists of moneys deposited into it pursuant to this article  
5 and interest earned on investments made from moneys in the fund.

6 (b) Moneys from the Real Property Fund shall be expended by  
7 the executive director of the Real Estate Division of the  
8 Department of Administration for the acquisition of real property  
9 and to pay for costs, expenses, and services associated with  
10 acquisition, leasing, appraisal and other real estate services  
11 provided to the Secretary of Administration on behalf of the State  
12 of West Virginia and other spending units subject to the discretion  
13 of both the Secretary of the Department of Administration and the  
14 Governor.

15 **§5A-10-13. Authority to bill for services.**

16 (a) Each spending unit served by the Real Estate Division is  
17 authorized and directed to transfer to the Real Estate Division for  
18 deposit into the Real Property Fund the charges, as invoiced by the  
19 Real Estate Division, for that spending unit's actual costs and  
20 expenses associated with third-party real estate services, as  
21 approved by the Secretary of Administration;

22 (b) Each spending unit served by the Real Estate Division is  
23 authorized and directed to transmit to the Real Estate Division,  
24 upon receipt of an annual invoice from the Real Estate Division and  
25 for deposit into the Real Property Fund, the flat fee on a per

1 square foot basis for each of the spending units' leases, whether  
2 for the occupancy of space from a private party or state-owned  
3 property pursuant to paragraphs (A) and (B), subdivision three,  
4 section three of this article, except for those spending units that  
5 are exempt under section two, article ten, chapter five-a of this  
6 code;

7 (c) Those spending units that are exempt under section two,  
8 article ten, chapter five-a of this code, and who request the  
9 assistance of the Real Estate Division are authorized and directed  
10 to transfer to the Real Estate Division for deposit into the Real  
11 Property Fund the charges, as invoiced by the Real Estate Division,  
12 for all real estate services and costs expended and incurred by the  
13 Real Estate Division.

14 (d) The executive director shall maintain accurate records  
15 reflecting the cost of administering the provisions of this  
16 article.

NOTE: The purpose of this article relates to the responsibilities of the Real Estate director. The bill permits the director to acquire real property and to contract for third-party real estate services. The bill permits the spending units to be billed for the actual costs of those third-party services and to be billed for the services of the Real Estate Division. The bill creates the Real Property Fund and establishes what revenues are to be deposited into that fund. The bill requires revenue associated with wireless communication towers to be deposited into the fund instead of the General Revenue Fund, unless the property is subject to a pledge of its revenues in connection with a preexisting revenue bond issue. The bill establishes what moneys from the fund may be used for. The bill also exempts real property owned by the Department of Agriculture and the West Virginia State Conservation Committee from certain accounting and reporting requirements.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§5A-10-12 and §5A-10-13 are new; therefore, they have been completely underscored.